IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 523 OF 2005

The Municipal Corporation of
Greater Mumbai. .. Appellants

Vs.

Chandrakant Kantilal Khatri
and anr. .. Respondents

Ms. G.S. Joglekar for Appellant-Corporation.

CORAM: B.H. MARLAPALLE, J.

Date : June 27, 2005.

P.C.:

1. Heard Ms. Joglekar, the learned counsel for the appellant-corporation.

2. The order dated 9/5/2003 passed by the learned Judge of the City Civil Court at Mumbai making the Notice of Motion No.3569 of 2002 absolute in terms of prayer clause (a) in L.C. Suit No. 4773 of 2002 has been challenged in this appeal. The plaintiff before the trial court had stated that inspite of several complaints lodged against the Defendant No.2, no steps have been taken to clean drainage flowing from the house of Defendant No.2. It was necessary to reconstruct, repair and/or clean the drainage lines and the chamber as well. The trial court referred to

the statutory obligations of the appellant-corporation under Sections 231, 233-A, 235, 243, 369 and 376 of the Bombay Municipal Corporation Act to remove, replace, repair, check and clear the drainage line and chambers for smooth clearance of sewerage to public drainage system. It appears that Defendant No.2 did not bother to take steps inspite of several complaints, though he was prosecuted by the Corporation under Section 471 of the BMC Act and he was convicted as well.

3. The reasoning given by the trial court in directing the appellant-corporation to take appropriate steps to ensure that the discharge from the drainage flowing from the house of Defendant No.2 is free from any nuisance and maintain clean does not call for any interference and the said order will not come in the way of the Corporation to take appropriate steps including the steps for recovery of costs from Defendant No.2 if so permissible under the rules.

4. The appeal is, therefore, dismissed in limine.

(B.H. Marlapalle,J.)